IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| **REPLY TO EXAMINER'S ANSWER**	Atty. Docket No. **VIGN1690-1**

Applicant **Dean Moses**	
Application Number **10/091,513**	Filed **03/07/2002**
Title **Method and System for Sharing Different Web Components Between Different Web Sites in a Portal Framework**	
Group Art Unit **2152**	Examiner **Dinh, Dung C.**
Confirmation No. **8808**	

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Commissioner for Patents
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Dear Sir:
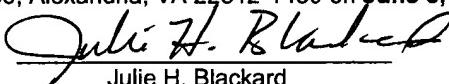
Appellant presents this Reply to the Examiner's Answer to the Appeal Brief mailed on April 8, 2005. Appellant respectfully requests that this Reply to the Examiner's Answer be considered in this appeal by the Board of Patent Appeals and Interferences.

Reply to Examiner's Answer

1. Introduction

The Examiner responded to the Appeal Brief filed by the Appellant on February 17, 2005 ("Appeal Brief") with the Examiner's Answer to the Appeal Brief of April 8, 2005 ("Examiner's Answer"). In the Examiner's Answer the Examiner attempts to characterize the issues in this appeal as twofold: a) is Stefik's ticket a reference to an object and b) is providing an invokable software object as a digital work an obvious variation of Stefik's teaching? (*See* Examiner's Answer, Page 6)

This characterization is, however, an oversimplification and misstatement of the issues before the Board in this appeal. The Examiner rejected all of the claims in the application under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,236,971 ("Stefik") and Publication No. 2002/0078377 ("Chang"). In order to establish a prima facie case of obviousness, the Examiner must show that three criteria are met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. 2143.

Thus, the issues are more broadly, and correctly, defined as: a) do Stefik and Chang teach all the limitations of the invention, and b) would a person of ordinary skill in the art have combined references as suggested by the Examiner.

2. Not All Limitations Disclosed

Independent Claim 1 of the Application recites "storing a reference to an object in a first repository, wherein the object is an invokable software object, performing a first operation to store a duplicate of the reference to the object in a second repository, wherein the first operation is in accordance with a first privilege granted as defined by a permission." Independent Claim 27 recites "a first repository operable to store a reference to an object wherein the object is an invokable software object, and a second repository operable to store a duplicate of the reference to the object in response to a first operation, wherein the first operation is in

accordance with a first privilege granted as defined by a permission." Independent Claims 14 and 44 recite similar limitations. Thus, each of these independent Claims shares the elements of storing a reference to an object in a first repository and storing a duplicate of the reference to the object in a second repository. Furthermore, each shares the common recitation that the operation to store the duplicate is in accordance with a privilege.

The term "reference to an object" as used in the art, is understood to mean a reference that points to the location of an object in a database or file system and identifies the object type, (for example, a pointer). Based on the reference to the object, a programmatic user associated with a site can find the object and invoke an instance of the object. The present invention is drawn to the duplication of the reference to an object from a first repository to a second repository. If a site has access to the second repository, the site will be able to locate the referenced object and invoke an instance of the object based on the duplicated reference to the object, even without access to the first repository. Access to objects can be controlled by requiring that duplication of a reference to an object occur according to a set of permissions. For example, a first site wishing to share an object A, which is referenced in a first repository associated with object A, can only duplicate the reference to a second repository associated with a second site if the first site has privileges to add references to the repository of the second site. If the reference is duplicated to the repository of the second site, the second site can invoke an instance of object A, even without access to the repository of site A. This allows for more efficient administration of multiple sites that require access to common objects.

The Examiner equates the digital ticket of Stefik to the reference to the invokable software object of Claims 1, 14, 27 and 44 of the Application. The Examiner disagrees with the Appellant's definition of the term "reference to an object" as defined above, stating that the Examiner will use the ordinary definition of a reference, e.g. to refer to, to designate, identify or associate (See Examiner's Answer, Page 6). While it is difficult for Appellant to discern the difference between the Examiner's definition and the ordinary use of the term "reference to an object" in the art, even assuming arguendo the Examiner's definition of reference, the digital ticket of Stefik does not function as a reference to an object.

The Examiner asserts that:

"Stefik teaches storing a digital ticket on a user repository. The digital ticket provides certain rights to a digital work stored on a master repository. It is

implicit that a digital ticket issued for a particular digital work and can only be used for access to that particular digital work. When access to the digital work is requested the user repository communicates with a master repository to verify that the user repository has a valid ticket. Stefik does not disclose the details structure [sic] of the digital ticket. However, it is inherent that there must be some type of identification or reference associating the ticket to the particular digital work. Stefik's digital work corresponds to an object of the invention. Hence the ticket is a reference to an object because it refers to or associates with an object." (*See* Examiner's Answer, Pages 6-7)

2.1 It Is Not Implicit that a Digital Ticket is Issued for a Particular Work

The Examiner goes on to cite Col. 4, Lines 6-14 and 40-49 of Stefik for his assertion that the holder of a ticket has specific rights to only a particular digital work. Col. 4, Lines 6-14 of Stefik recite:

"A system for controlling the distribution and use of digital works using digital tickets is disclosed. A ticket is an indicator that the ticket holder has already paid for or is otherwise entitled to some specified right, product or service. In the present invention, a "digital ticket" is used to enable the ticket holder to exercise usage rights specifying the requirement of the digital ticket. Usage rights are used to define how a digital work may be used or distributed."

Col. 4, Lines 40-49 of Stefik recite:

"A digital ticket may be used in many commercial scenarios such as in the purchase of software and prepaid upgrades. A digital ticket may also be used to limit the number of times that a right may be exercised. For example, a user may purchase a copy of a digital work, along with the right to make up to 5 Copies. In this case, the Copy right would have associated therewith a digital ticket that can be punched up to 5 times. Other such commercial scenarios will become apparent from the detailed description."

In contrast to the assertions of the Examiner, neither of the above passages discloses that a digital ticket has specific rights to only a particular digital work. In fact, these passages imply the opposite. If, as recited in the above passages, a digital ticket is used to enable a user to exercise usage rights specifying the digital ticket and these usage rights are attached to digital works to determine what transaction can be successfully carried out for a digital work (See Stefik, Col 17, Lines 52-56), it would seem that the same digital ticket can be specified by usage rights attached to multiple digital works. Additionally, the above passages state that a ticket may be used in many commercial settings such as purchase of software and pre-paid upgrades. Thus, a digital ticket may be used to exercise usage rights with respect to digital works (such as software upgrades) which may be produced in the future. It would therefore be difficult to associate a digital ticket with a particular digital work, if the digital ticket can be utilized for works which have not yet been produced, or may never be produced.

2.2 It is Not Inherent that a Digital Ticket is Associated with Digital Work

The Examiner has also asserted that it is inherent that there must be some type of identification or reference associating the ticket to the particular digital work. As recited in M.P.E.P 2112:

> "The fact that a certain result or characteristic may occur or be present in the
> prior art is not sufficient to establish the inherency of that result or characteristic.
> In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)
> (reversed rejection because inherency was based on what would result due to
> optimization of conditions, not what was necessarily present in the prior art); In re
> Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish
> inherency, the extrinsic evidence 'must make clear that the missing descriptive
> matter is necessarily present in the thing described in the reference, and that it
> would be so recognized by persons of ordinary skill. Inherency, however, may
> not be established by probabilities or possibilities. The mere fact that a certain
> thing may result from a given set of circumstances is not sufficient.' " In re
> Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)
> (citations omitted)"

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art." *Ex parte Levy,* 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product balloon was <u>biaxially oriented</u>. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." *Id.* at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.)."

The Examiner has provided no basis in fact or technical reasoning that reasonably supports the determination that it is inherent that there must be some type of identification or reference associating the ticket to the particular digital work. In fact, as explained in more detail below, there are plausible interpretations of Stefik where there is no identification or reference associating the ticket to the particular digital work. As such, it is not the case that it is necessary that there be some type of identification or reference associating the ticket of Stefik with a particular digital work. Consequently, the Examiner is incorrect in asserting that it is inherent that there must be some type of identification or reference associating the ticket to the particular digital work.

2.3 Reference to an Object Not Disclosed in Stefik

The Examiner's logic with respect to the disclosure of a reference to an object in Stefik can be distilled and summarized as follows: it is implicit that a digital ticket is issued for a particular work and can only be used to access that digital work, and it is inherent that there must be some type of identification or reference associating the digital ticket to the work. The conclusion can therefore be reached that the digital ticket is a reference to an object. However,

the above passages do not support the Examiner's assertion that a digital ticket has specific rights to only a particular digital work, or that a digital ticket is associated with a particular work. Furthermore, the Examiner offers no other cites or proof that a) the digital ticket is issued for a particular work, b) that a digital ticket can only be used to access that digital work or that c) there must be some type of identification or reference associating the ticket to match the ticket to the work.

As can be seen, then, the Examiner is utilizing circular logic. By assuming, without support, that a) it is "implicit" that the digital ticket is issued for a particular work, b) that it is "implicit" a digital ticket can only be used to access that digital work and that c) it is "inherent" that there must be some type of identification or reference associating the ticket to match the ticket to the work, the Examiner reaches the desired conclusion that the ticket is a reference to an object, even though Stefik neither teaches, suggests nor implies that the digital ticket is a reference to an object.

Additionally, the Examiner asserts that because Stefik discloses a prior art system where a physical voucher card has enough information to identify a purchased book, and there is no evidence that Stefik considers the identification to a specific work to be a problem or is undesirable, it is inherent that Stefik's digital ticket still retains the indication to the work. (See Examiner's Answer, Page 8) Appellant respectfully submits that this logic is also flawed. Encapsulated, this logic can be summarized as follows: a prior art system mentioned in Stefik discloses a physical voucher that identifies a work, Stefik does not explicitly state that this is a problem or is undesirable, therefore it is inherent that a digital ticket of Stefik "retains" the indication to a work. Thus, the Examiner has used an omission to obtain a positive recitation: Stefik doesn't mention that it would be undesirable to have a physical device contain a reference to a work, therefore is inherent digital ticket of Stefik is a reference to an object. Additionally, as discussed above, inherency requires that a characteristic necessarily flows from the teachings of the applied prior art. Appellant respectfully submits that a digital ticket being a reference to an object does not necessarily flow from Stefik's failure to explicitly state that identification of a work is a problem or is undesirable.

The Examiner's arguments notwithstanding, as explained in Applicant's Appeal Brief, there is no teaching or suggestion in Stefik that a particular work can be located in a database from the contents of the digital ticket, that a digital ticket can only be used to access a specific digital work, that there is some type of identification or reference associating the ticket with a

digital work, that a software object can be invoked using a digital ticket, or that the digital ticket functions as a "reference to an object" as that phrase is used in the art.

More specifically with reference to Stefik and as recited in the Appeal Brief, during a copy operation the requester sends a server a message to initiate a "Copy Transaction". (*See* Stefik, Col 34, Lines 16-43) The message indicates the work to be copied, the version of the copy right to be used for the transaction, the destination address information for placing the work and the number of copies requested. (*See* Stefik Col. 34, Lines 23-28) If the work requires a ticket, a ticket may be given and punched by a distributor the work is then copied to the requestor's repository. (*See* Stefik Col. 46, Lines 45-50). Thus, the desired work must be pointed out with specificity in a message from the requestor, and a ticket submitted separately. These types of tickets are not specific to the digital work requested, and a ticket may be used in transactions with more than one digital work.

An analogy may be made to purchasing tickets at a fair. When one arrives at a fair a number of generic tickets may be purchased. These tickets may be used for a variety of things within the fair, despite the fact that the tickets contain no references to those things. For example, the tickets may be used to ride the Ferris wheel, or the tilt-a-whirl. Additionally, these tickets may be used to purchase funnel cake or cotton candy. Thus, when a ride or food item is desired it must be identified separately, after a ticket can be presented in order to obtain the ride or food item. Thus, though those tickets contain no reference to a particular good or service they are necessary to obtain these goods or services. Additionally, the same ticket may be used to obtain a variety of goods or services.

This ability to utilize a ticket for a variety of digital works makes perfect sense for a system designed for the distribution of digital works. For example, it is a much more effective system if a user is allowed to purchase a digital ticket for a movie which can then be redeemed for any movie which a user desires at a particular time as opposed to purchasing a digital ticket for one specific movie which may only be redeemed for that particular movie. Additionally, if the digital ticket of Stefik identifies a particular work, the system of Stefik would be highly inefficient. During initiation of a transaction of Stefik, a digital work is identified. The digital ticket can be submitted later, as described above. This arrangement, however, makes little sense if the digital ticket identifies the digital work. It would seem to be much more efficient to just send the

digital ticket and utilize the digital ticket itself to identify the work. After all, why include identifying information in a digital ticket unless that identifying information is actually going to be used to identify the digital work?

As the digital ticket of Stefik does not point to the location of an object in a database or file system, does not identify an object type and does cannot be used to invoke an object, but instead is used to obtain usage rights to an already identified work, the digital ticket of Stefik is not a reference to an invokable software object. Accordingly, Appellant respectfully submits that the Examiner has not pointed out where storing a duplicate of a reference to an object as recited in independent Claims 1, 14, 27 and 44 can be found in Stefik.

3. Examiner's / Appellant's Positions Regarding Obviousness

The Examiner asserts that the present invention is obvious from the combination of Stefik's system for the distribution of digital media described above and the distributed computer system of Chang. The Examiner incorrectly asserts that the combination of the Stefik reference and the Chang reference teaches all the limitations of the invention in question, and that a person of ordinary skill in the art of the invention would have combined Stefik's distribution of digital media reference with the distributed computer system reference of Chang to arrive at the invention. More specifically, the Examiner says the rejection is based on the fact that an invokable software object was known at the time of the invention (as disclosed by Chang) and that providing an invokable software object as a digital work would have been an obvious variation of Stefik's teaching.

In the Examiner's Answer the Examiner has simply reiterated his position with regard to the combination of the Stefik and Chang references without responding or acknowledging Appellant's arguments (repeated below for the convenience of the Board). As argued in the Appeal Brief, the Appellant believes that the Chang reference is from the distributed computer system arts while the Stefik reference is taken from the digital media distribution arts, that these arts are distinct, and that a person of ordinary skill in the art of portal frameworks would not have combined references from these two domains to obtained the invention as suggested by the Examiner. The Applicant is not suggesting the physical integration of the systems of Stefik and Chang to refute the Examiner's assertions, but instead that there is no teaching or motivation to apply the system of Stefik to the software object of Chang and that additionally,

even if one was to utilize the system of Stefik in conjunction with the software object disclosed in Chang the result would be large, unwieldy and unsuitable for its intended purpose.

3.1 Examiner's Reasoning

The Examiner stated in the Office Action of July 17th, 2004 ("Paper 18") that Stefik teaches the invention, except that Stefik does not specifically disclose the object being an invokable software object. More specifically the Examiner has stated that "Chang is used merely to shown [sic] that it is known in the art to provide programs in object forms and to lease computer resources." (*See* Paper 18, Page 1) The Examiner further states that "given the teaching of Stefik, it would have been obvious of one of ordinary skill in the art to apply the teaching of Stefik to control the leasing of software objects" (*See* Paper 15, Page 3-4) In other words, the Examiner believes it would be obvious simply to take the system of Stefik and utilize it for controlling the leasing of invokable software objects and other system resources.

The Examiner attempted to show motivation for this change by stating that "it would have been obvious...because it would have enabled the owner of a software object to specify usage and distribution rights to the software object." (*See* Paper 15, Page 3, Last Paragraph)

3.2 Flaws In The Examiner's Reasoning Regarding Combination of Stefik and Chang

The fallacy of the Examiner's reasoning that it would be obvious simply to take the media distribution method of Stefik and apply it to the invokable software objects of Chang is apparent from the fact that there are different distribution and usage patterns for the digital works of Stefik and the invokable software objects of Chang. For example, the digital works of Stefik, including audio, video and electronically published material, may be eventually distributed to human users who may have need to further distribute this digital work to other human users. In contrast, Chang is directed to a methodology for managing leases on system resources where these resources do not need to be further distributed to another recipient, and cannot be duplicated, replicated, or have multiple simultaneous users without defeating the purpose of Chang. Thus, the needs for the distribution system of Stefik differ drastically from the needs for managing system resources of Chang. The system of Stefik must manage the

copy and distribution of multiple copies of a duplicable digital work while Chang arranges the serial use of non-duplicable system resources. Because of these factors, a system for distribution of media cannot be translated and applied to a system for the distribution of system resources, nor is it obvious that such a system would even be applicable to the distribution of system resources.

Further, in regard to the Examiner's assertion that the combination of Stefik and Chang "would have been obvious...because it would have enabled the owner of a software object to specify usage and distribution rights to the software object," the Appellant will explain below how applying Stefik to distribute system resources would render the resulting system for the distribution of system resources overly complex and exceedingly expensive due to the high overhead costs imposed.

3.3 Applying the System of Stefik to the Resources of Chang would Result in Needless Complexity

Despite the Examiner's assertion that it would be desirable to apply the invention of Stefik to invokable software objects to enable the owner of an invokable software object to specify usage and distribution rights to a software object, utilizing the invention of Stefik to control access to invokable software objects would create a system with a needlessly complex overhead that would be detrimental to the operation of the system.

More specifically, Stefik refers to usage rights of various digitally encoded works, including audio, video and electronically published material. These digital works are eventually distributed to human users who may have need to further distribute the digital work to other human users. Thus, human users are granted access to these digital work using digital tickets. This may be simultaneous access to a digital work, or copies of the digital work. To control this access, in the usage rights of Stefik are attached directly to digital works (*See* Stefik Col. 9, Lines 14-16). This may be implemented through the use of a description tree which contains the usage rights of a digital work and makes it possible to examine the rights and fees for a digital work without reference to the contents of the digital work. (*See* Stefik Col. 9, Lines 29-34) The rights portion will contain a data structure, such a look up table, wherein the various information associated with the right is maintained. (*See* Stefik Col. 10, Lines 6-9), and it is "fundamental to the invention that the usage rights are treated as part of the digital work", so the usage rights can be transported with any copy of the digital work. (*See* Stefik Col. 11, Lines 32-

40). These usage rights are defined in a high level "usage rights language" to define usage rights associated with digital works and their parts. (*See* Stefik Col. 17, Lines 52-55). These usage rights can include the need for a ticket to access the digital work, this ticket must be presented to a digital ticket agent who can punch the digital ticket before access can be gained to a digital work. (*See* Stefik Col. 22, Line 60-Col. 23, Lines 14)

In contrast, Chang is directed to a methodology for managing leases on system resources within a distributed computing environment, wherein a resource is a portion of a computer system's physical units, logical units, or functionality. These physical and logical resources do not have the usage and distribution patterns of the digital works of Stefik. The resources of Chang exist in a distributed computing environment. (*See* Chang, Summary of the Invention, Paragraph [0032]) In an environment such as this a software program that has received use of a logical resource has no need to further distribute that resource. These distributed resources are a way of executing logic or functionality on one computer, and after that functionality is executed the distributed local resource may be released, after which the resource may be leased to another software program or user. (*See* Chang FIG. 9, Paragraph [0087]) Thus, the resources of Chang may be serially assigned to different users, and each of these system resources may be heavily in demand.

To illustrate further, in the system resulting from the application of Stefik to the software object of Chang each software object would need to be associated with a description tree associated with it. This description tree would contain the usage rights of the invokable software object that make it possible to examine the rights and fees for the invokable software object without reference to the contents of the digital work. The description tree could contain a data structure, such as a look up table, wherein the various information associated with the rights are maintained. This usage tree, in many cases, would be larger than the invokable software object itself, and would have to be passed each time the invokable software object is passed to another. The need to pass this usage tree along with the invokable software object would increase the time it takes to pass the invokable software object, take up more memory, decrease the efficiency and in general place an unneeded burden on the resulting system.

Additionally, every resource within a system which wishes to access the invokable software object would need to obtain a digital ticket, forward this digital ticket to a digital ticket agent before the invokable software object can be accessed or used. Again, the need to pass this digital ticket along with the invokable software object would increase the time it takes to

pass the invokable software object, take up more memory, decrease the efficiency and in general place an unneeded burden on the resulting system.

Consequently, the application of Stefik to the software object of Chang has requirements that result in a needlessly complex system for regulating the use and distribution of an invokable software object which will not be further distributed.

3.4 Examiner Has Failed To Show Suggestion Or Motivation To Combine References

As noted above, in order to make a prima facie case of obviousness, the Examiner must show that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings (*See* M.P.E.P. 2143). The Examiner implies that it would have been an obvious matter of engineering design choice to apply the invention of Stefik to share invokable software objects (e.g., by stating that "it is known at the time of the invention to share/lease invokable software objects" and "it would have been obvious for one of ordinary skill in the art to apply Stefik's teaching to control distribution of any type of digital work, including...invokable software objects"). While the Examiner cites two passages of Stefik (*See* Stefik Abstract, Col. 4, Lines 6-14) as motivation to combine the Stefik and Chang references, these passages serve only to describe the functionality of the invention of Stefik, not to suggest that it would be desirable to apply the invention of Stefik to invokable software objects to enable the owner of a software object to specify usage and distribution rights to a software object. (*See* In re Garrett, 33 BNA PTCJ 43 (November 12, 1986); In re Chu, 66 F.3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995))

Contrary to the Examiner's assertion, there is simply no suggestion in the Stefik reference to modify its own structure to be applied to the invokable software objects of Chang. The invention of Stefik is intended to share digital works between users, where these digital works may be copied and simultaneously accessed. In contrast, the invention of Chang is intended to serially lease resources to users in a distributed system (*See* Chang FIG. 9). The knowledge generally available to one of ordinary skill in the art taught that, in the distributed system domain, a system for distributing system resources should employ as low an overhead as possible protection by avoiding the overhead of systems such as the one presented in Stefik, as

elaborated on above. As there is no direct teaching in Stefik to modify its own structure with the teachings or software objects of Chang, and the knowledge of one of ordinary skill in the art would not have taught the combination of the Stefik and Chang references, the suggestion/motivation criterion of M.P.E.P. 2143 is not met.

3.5 Unacceptable Performance of System of Stefik Applied to Chang

The example elaborated on above in Section 3.4 also makes it clear that, in the specific case of the present system for sharing invokable software objects in a portal framework, the Stefik and Chang references could not be combined to form an improved, or additionally even a workable system. Because the overhead associated with distributing an invokable software object would most likely not be acceptable, the system based on the combination of these references would likely not be usable, and would most likely result in a system unable to distribute its resources quickly enough to be usable, and certainly a system which would not be cost effective or efficient. The system would therefore not be considered a successful result of the combination of the references.

3.6 Examiner Has Failed To Show Reasonable Expectation Of Success

In addition to the suggestion/motivation criterion, the Examiner must show that there is a reasonable expectation of success in combining the references (see M.P.E.P. 2143). As explained above, the Examiner's suggested application of the Stefik system to the software object of Chang would use a description tree (Stefik's implementation) containing the usage rights for every system resource. As described in Stefik such a description tree would contain a data structure, such as a look up table, wherein the various information associated with the system resource is maintained. As also explained above, the overhead for this type of system would be substantial, and would increase with the number of system resources. Consequently, even if, arguendo, a person of ordinary skill were motivated to modify Stefik as suggested by the Examiner, there would be no reasonable expectation of an improved system. In other words, the overhead and complexity of the system suggested by the Examiner would be so great as to make the system ineffective. Thus, the reasonable expectation of success criterion of M.P.E.P. 2143 is not met.

4. Examiner Has Failed To Make A Prima Facie Case Of Obviousness Under 35 U.S.C. §103

Because the Examiner has failed to show that the prior art references teach or suggest all the claim limitations, that there was a suggestion or motivation to combine the Stefik and Chang references in spite of the contrary teachings, or that there was a reasonable expectation of success in combining the references, the Examiner has failed to meet the criteria set forth in M.P.E.P. 2143 for a prima facie case of obviousness. Accordingly, the Appellant requests that the rejection of the claims under 35 U.S.C. §103 be withdrawn.

5. Conclusion

As explained above, the Appellant believes the Examiner has failed to make a prima facie case of obviousness under 35 U.S.C. §103, and that the corresponding rejection of claims 1-44 should properly be withdrawn. The Appellant therefore respectfully requests that all of the rejections be withdrawn and that all the pending claims be allowed. While Applicant believes no further fees are due and owing, if Applicant is in error, the Commissioner is hereby authorized to deduct the appropriate amount from Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully Submitted,
Sprinkle IP Law Group

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